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Attorneys for Shelley D. Krohn, Chapter 7 Trustee

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

In re:

Case No. BK-S-12-14724-LBR
Chapter 7

WILLIAM WALTER PLISE, AKA BILL
PLISE,

Debtor.

SHELLEY D. KROHN, CHAPTER 7
TRUSTEE,

Adv. No. BK-S-12-1214-LBR

Plaintiff,

v.

**MOTION TO APPROVE COMPROMISE
AND SETTLEMENT PURSUANT TO
FEDERAL RULE OF BANKRUPTCY
PROCEDURE 9019**

WILLIAM WALTER PLISE; TENNILLE I.
PLISE; 13413 SHORE VISTA DRIVE, LLC;
OLD TOLL ROAD, LLC; DHLIC MORTGAGE,
LLC; BERT and SADIE BEDORD; KENNETH
J. AND MARCIA HILLS PROFIT SHARING
PLAN; ERIC RUSSELL PETERSON; SHAUN
CLEM; CRAIG ALAN STOOPS; KOBIA
INVESTMENTS, LLC; 5550 LAS VEGAS,
LLC; DOE individuals 1-10; and ROE
corporations 1-10,

Date of Hearing: March 19, 2013
Time of Hearing: 9:30 a.m.
Place: Courtroom No. 1, Third Floor
Foley Federal Building
300 Las Vegas Blvd., S.
Las Vegas, NV 89101

Defendants.

Judge: Hon. Linda B. Riegler

SHELLEY D. KROHN, Chapter 7 Trustee in the above-referenced action (the “Trustee”
or “Plaintiff”) by and through her counsel, the law firm of Cotton, Driggs, Walch, Holley,
Woloson & Thompson, and Defendants Tennille I. Plise, 13413 Shore Vista Drive, LLC, Old
Toll Road, LLC, Koba Investments, LLC and 5550 Las Vegas, LLC (collectively known as

1 “Defendants”), respectfully move this Court to Approve Compromise and Settlement pursuant to
2 Bankruptcy Rule 9019 (“Motion”), between the Defendants and Plaintiff (collectively, the
3 “Parties”) as reflected in the proposed Settlement Agreement.¹

4 The Parties have reached an agreement to settle Plaintiff’s claims against Defendants.
5 The Settlement is memorialized in the Settlement Agreement and Release executed by each of
6 the Parties on or about March 7, 2103 (the “Settlement Agreement”), a true and correct copy of
7 which is attached to the Declaration of Shelley D. Krohn (the “Krohn Declaration”) as **Exhibit**
8 **“1”**, which declaration is filed separately and concurrently with this Court as required under
9 Local Rule 9014(c)(2).

10 This Motion is based on the following Memorandum of Points and Authorities and the
11 exhibits attached hereto, the pleadings and papers on file herein, and any argument that may be
12 entertained on the hearing of the Motion.

13 Dated this 8th day of March, 2013.

14
15 **COTTON, DRIGGS, WALCH,**
HOLLEY, WOLOSON & THOMPSON

16 /s/ Victoria L. Nelson

17 Victoria L. Nelson, Esq. (SBN 5436)
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23 *Attorneys for Shelley D. Krohn, Chapter 7*
24 *Trustee*

25
26
27 ¹ The Settlement Agreement does not resolve any claims that were filed by the Trustee that objected to the discharge
28 of William Walter Plise pursuant to 11 U.S.C. § 727.

1 7. On November 2, 2012, Shore Vista filed an Answer to the First Amended
2 Complaint [Adv. Proc. Dkt. No. 36]. See Krohn Declaration.

3 8. Plaintiff subsequently discovered facts giving rise to a claim for relief for
4 fraudulent transfer pursuant to 11 U.S.C. § 544(b) to avoid the first deed of trust on the Austin
5 Property held in favor of DHLC Mortgage, LLC, (“DHLC”) Bert and Sadie Bedford, the
6 Kenneth J. and Marcia Hills Profit Sharing Plan, Eric Russell Peterson, Shaun Clem, and Craig
7 Alan Stoops (collectively, the “DHLC Investors”), and the second deed of trust held in favor of
8 Tennille. Plaintiff has also uncovered claims for relief for alter ego against Koba Investments,
9 LLC (“Koba Investments”) and 5550 Las Vegas, LLC (“5550 Las Vegas”). See Krohn
10 Declaration.

11 9. On November 13, 2012, Plaintiff filed a Motion to Amend the First Amended
12 Complaint in order to assert claims for relief against DHLC, the DHLC Investors, Koba
13 Investments, and 5550 Las Vegas [Adv. Proc. Dkt. No. 57]. See Krohn Declaration.

14 10. On December 19, 2012, the Court entered an Order Granting Plaintiff’s Motion to
15 Amend the First Amended Complaint [Adv. Proc. Dkt. No. 94]. See Krohn Declaration.

16 11. On December 27, 2012, Plaintiff filed a Second Amended Complaint against the
17 Debtor, Tennille, Shore Vista, DHLC, the DHLC Investors, Koba Investments, and 5550 Las
18 Vegas, alleging claims for relief for (1) alter ego; (2) avoidance of fraudulent transfers pursuant
19 to 11 U.S.C. § 544(b); (3) recovery of fraudulent transfers pursuant to 11 U.S.C. § 550; (4)
20 turnover of estate property pursuant to 11 U.S.C. § 542; (5) injunctive relief pursuant to
21 Bankruptcy Rule of Civil Procedure 7065; (6) objection to discharge of Debtor pursuant to 11
22 U.S.C. § 727(a)(2)(A); (7) objection to discharge of Debtor pursuant to 11 U.S.C. 727(a)(2)(B);
23 (8) objection to discharge of Debtor pursuant to 11 U.S.C. § 727(a)(3); (9) objection to discharge
24 of Debtor pursuant to 11 U.S.C. § 727(a)(4)(A); and (10) objection to discharge of Debtor
25 pursuant to 11 U.S.C. § 727(a)(4)(D); (11) objection to discharge of Debtor pursuant to 11
26 U.S.C. § 727(a)(5); and (12) objection to discharge of Debtor pursuant to 11 U.S.C. § 727(a)(6)
27 (the “Second Amended Complaint”) [Adv. Proc. Dkt. No. 98]. See Krohn Declaration.

28 ...

1 12. On January 2, 2013, the Court entered an Order Granting the Motion for
2 Preliminary Injunction [Adv. Proc. Dkt. No. 99]. See Krohn Declaration.

3 13. On January 7, 2013, Shore Vista, Koba Investments, and 5550 Las Vegas filed an
4 Answer to the Second Amended Complaint that included a demand for jury trial [Adv. Proc. Dkt.
5 No. 111]. See Krohn Declaration.

6 14. On January 7, 2013, the Debtor filed an Answer to the Second Amended
7 Complaint [Adv. Proc. Dkt. No. 112]. See Krohn Declaration.

8 15. On January 10, 2013, Shore Vista, Koba Investments, and 5550 Las Vegas filed a
9 Motion for Certification of Adversary Proceeding to the District Court (the “Motion for
10 Certification”) [Adv. Proc. Dkt. No. 114]. The Motion for Certification argues that the present
11 adversary proceeding should be transferred to the United States District Court pursuant to
12 Federal Rule of Bankruptcy Procedure (“FRBP”) 9015(b) and Local Rule of Bankruptcy
13 Procedure 9015(e). See Krohn Declaration.

14 16. On January 10, 2013, Tennille and Old Toll filed an Answer to the Second
15 Amended Complaint that included a demand for jury trial [Adv. Proc. Dkt. No. 115].

16 17. On January 11, 2013, Tennille and Old Toll filed a Joinder to the Motion for
17 Certification [Adv. Proc. Dkt. No. 116]. See Krohn Declaration.

18 18. On February 13 and 14, 2013, the Parties attended a settlement conference with
19 Judge Herbert Ross in attempt to resolve all issues in the Second Amended Complaint. See
20 Krohn Declaration.

21 19. The Trustee resolved the dispute with the Defendants at the settlement conference
22 pursuant to the terms set forth in the Settlement Agreement.

23 20. The Parties seek to resolve the outstanding claims and rights of Plaintiff, and to
24 resolve all issues regarding the Complaint brought by Plaintiff against the Defendants. See
25 Krohn Declaration.

26 21. The Parties have negotiated and reached the settlement in good faith. See Krohn
27 Declaration.

28 ...

1 22. The material terms of the Settlement Agreement are as follows:

2 i). In settlement of the claims for relief in the Second Amended Complaint against
3 Shore Vista and Tennille, the Parties agree that the Austin Property will be
4 sold according to the following terms:

5 a. The Austin Property will continue to be listed for sale
6 pursuant to the terms of the exclusive listing agreement
7 entered into between Shore Vista, Delilah Fuentes, and
8 Keller Williams Realty (the "Exclusive Listing
9 Agreement"). If the Austin Property has not sold by the
10 time the Exclusive Listing Agreement expires, the Trustee,
11 in her sole discretion, will have the right to replace Delilah
12 Fuentes and Keller Williams Realty with a real estate agent
13 of her choosing.

14 b. The listing agreement for the Austin Property shall be
15 amended to indicate that the Trustee and Shore Vista are
16 jointly selling the Austin Property.

17 c. Any sale of the Austin Property is contingent on the written
18 approval of both the Trustee and Shore Vista.

19 d. Any proceeds from the sale of the Austin Property will first
20 be used to satisfy any balance owed to DHLC and the
21 DHLC Investors pursuant to the First Deed of Trust.

22 e. After the First Deed of Trust in favor of DHLC and the
23 DHLC Investors has been satisfied, four hundred and
24 twenty-five thousand dollars (\$425,000.00) shall be wired
25 from escrow to the Trustee.

26 f. Any funds remaining after (1) the First Deed of Trust in
27 favor of DHLC and the DHLC Investors has been satisfied
28 and (2) the four hundred and twenty-five thousand dollars
 (\$425,000.00) has been wired to the Trustee shall be
 distributed to Tennille.

29 ii). The Trustee agrees to release Tennille from all claims arising out of the transfer of
30 any and all real and/or personal property related to the Divorce Decree.

31 iii). The Trustee agrees to voluntarily dismiss the claims for relief in the Second
32 Amended Complaint against Old Toll and the Colorado Property.

33 iv). The Trustee agrees to voluntarily dismiss the claims for relief for alter ego in the
34 Second Amended Complaint against Koba Investments.

35 v). In settlement of the claims for relief in the Second Amended Complaint against
36 5550 Las Vegas, Halverson agrees to avoid the 5550 Las Vegas Transfer (defined
37 above) and transfer any and all interest he holds in 5550 Las Vegas to the
38 bankruptcy estate of William Walter Plise including, but not limited to, all real or
39 personal property owned or controlled by 5550 Las Vegas, all legal and equitable
40 interests owned or controlled by 5550 Las Vegas, all tangible and intangible

property interests owned or controlled by 5550 Las Vegas, or any claims for relief arising under Nevada law or the United States Bankruptcy Code out of the transfer of money from 5550 Las Vegas to third parties. Halverson further agrees to not defend, dispute, object, or assist in any defense of a claim for relief for alter ego brought against 5550 Las Vegas by the Trustee.

- vi). The Trustee agrees to release Halverson from any liability arising under the United States Bankruptcy Code or Nevada law for payments that were made to Halverson from the bank account at Service First Bank of Nevada held in the name of 5550 Las Vegas (Account Number 1020009515). Nothing in this Agreement prevents the Trustee from pursuing any claims for relief arising under the United States Bankruptcy Code or Nevada law against Halverson for conduct unrelated to withdrawals from the bank account at Service First Bank of Nevada held in the name of 5550 Las Vegas (Account Number 1020009515).

III. LEGAL ARGUMENT

A. The Legal Standard for Approval of Settlement

The Bankruptcy Court may approve a compromise or settlement between a debtor and another party pursuant to Fed. R. Bankr. P. 9019(a), which provides the following:

Compromise. On motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Notice shall be given to creditors, the United States trustee, the debtor, and indenture trustees as provided in Rule 2002 and to any other entity as the court may direct.

FED. R. BANKR. P. 9019(a).

Compromise and settlement agreements have long been an inherent component of the bankruptcy process. The Ninth Circuit recognized that “[t]he bankruptcy court has great latitude in approving compromise agreements.” See Woodson v. Fireman’s Fund Ins. Co. (In re Woodson), 839 F.2d 610, 620 (9th Cir. 1988). Accordingly, in approving a settlement, the Court need not conduct an exhaustive investigation of the claims sought to be compromised. See United States v. Alaska National Bank (In re Walsh Constr., Inc.), 669 F.2d 1325, 1328 (9th Cir. 1982). Rather, it is sufficient that the Court find that the settlement was negotiated in good faith and is reasonable, fair, and equitable. See Martin v. Kane (In re A & C Properties), 784 F.2d 1377, 1381 (9th Cir. 1986), cert. denied, 479 U.S. 854 (1986). It is within the sound discretion of the bankruptcy court whether to accept or reject a compromise. See In re Carson, 82 B.R. 847 (Bankr. S.D. Ohio 1987).

...

1 The Ninth Circuit has identified the following factors for consideration in determining
2 whether a settlement is reasonable, fair, and equitable:

3 (a) the probability of success in the litigation; (b) the difficulties, if
4 any, to be encountered in the matter of collection; (c) the
5 complexity of the litigation involved, and the expense,
6 inconvenience and delay necessarily attending it; (d) the
7 paramount interest of the creditors and a proper deference to their
8 reasonable views in the premises.

9 In re A & C Properties, 784 F.2d at 1381. The Debtor is not required to satisfy each of these
10 factors as long as the factors as a whole favor approving the settlement. See In re Pacific Gas &
11 Electric Co., 304 B.R. 395, 416 (Bankr. N.D. Cal. 2004). In considering the factors, “a precise
12 determination of the likely outcome is not required, since an exact judicial determination of the
13 values at issue would defeat the purpose of compromising the claim.” In re Telesphere Comm’s,
14 Inc., 179 B.R. 544, 553 (Bankr. N.D. Ill. 1994) (internal quotations omitted). Thus, rather than
15 determining various issues of fact and law, the Court should “canvass the issues and see whether
16 the settlement fall[s] below the lowest point in the range of reasonableness.” In re Lion Capital
17 Group, 49 B.R. 163, 175 (Bankr. S.D.N.Y. 1985) (internal quotations omitted).

18 **B. The Settlement Agreement is Fair and Equitable**

19 **1. The Probability of Success in the Litigation**

20 Plaintiff alleges in the Complaint that the Debtor fraudulently transferred approximately
21 \$2,850,000.00 to Tennille as a part of a divorce decree that was used to purchase the Austin
22 Property, which was then fraudulently transferred by Tennille to Shore Vista. Plaintiff also
23 alleges that the Debtor fraudulently transferred his interest in the Colorado Property to Tennille,
24 which was then fraudulently transferred by Tennille to Old Toll. Plaintiff seeks to recover the
25 Austin Property and Colorado Property for the benefit of the Debtor’s creditors. Plaintiff further
26 alleges that 5550 Las Vegas and Koba Investments are the alter egos of the Debtor. Plaintiff
27 believes that she is likely to prevail in the litigation against the Defendants. However, all of the
28 claims for relief in the Second Amended Complaint against the Defendants are fact-intensive and
raise complex legal questions. As a result, it is difficult to state with much certainty if the Court
would conclude that Plaintiffs are entitled to recover the Austin Property and Colorado Property

1 for the benefit of the bankruptcy estate.

2 **2. The Difficulties in Matter of Collection**

3 It is likely that Plaintiff will encounter difficulties in the matter of collection if she is
4 successful in her litigation with the Defendants. The Austin Property is subject to a first deed of
5 trust in favor of DHLC and the DHLC Investors which has a maturity date of April 1, 2013.
6 Since the Parties would not be prepared for trial until the latter part of 2013, the claims for relief
7 in the Second Amended Complaint would not be resolved prior to the April 1, 2013 maturity
8 date. Failure to satisfy the first deed of trust would result in DHLC and the DHLC Investors
9 initiating foreclosure proceedings, which would only have the effect of complicating any
10 collection process in the event that the Plaintiff was successful in the litigation. Moreover, the
11 Colorado Property is vacant land that would be difficult to market and sell. Thus, the factor of
12 difficulty in collection militates in favor of approving the proposed Settlement Agreement
13 submitted to this Court for approval.

14 **3. The Complexity of the Litigation Involved and the Expense, Inconvenience**
15 **and Delay**

16 The litigation involved is complex because it involves significant bank records, factual
17 findings, and nuanced legal issues. The litigation would also involve substantial time and
18 expense because of the evidence that will need to be gathered and analyzed and also because the
19 claims are intensely fact-based and likely will ultimately require a credibility determination from
20 the Court of the parties' veracity and intent in their business relationship. The delay and expense
21 to litigate the Complaint can be avoided altogether with the resolution provided in the Settlement
22 Agreement. The Settlement Agreement resolves the Parties' claims to any rights in the Colorado
23 Property, the Austin Property, and includes a release of all claims arising from any transfer made
24 pursuant to the Divorce Decree entered into between the Debtor and Tennille. To avoid the
25 delay, expense and uncertainty in the litigation, it is the most expeditious, cost effective,
26 convenient and least expensive for the Parties to amicably resolve the issues in the Second
27 Amended Complaint to avoid prolonged litigation. Thus, this factor militates in favor of an
28 order from this Court approving the proposed Settlement Agreement.

1 **4. The Paramount Interest of the Creditors**

2 The Debtor's Schedule B provides that he only owns personal property in the amount of
 3 \$4,738.71. This \$4,738.71 figure includes a checking account (\$988.71), a personal safe and
 4 computer (\$250.00), assorted clothing (\$250.00), a wedding ring and watch (\$1,000.00), a 9mm
 5 Glock Pistol (\$250.00), and an eighteen foot trailer (\$2,000.00). Schedule C provides that the
 6 Debtor is exempting \$2,738.71 of the \$4,738.71 in assets. The only item of personal property
 7 that was not exempted, the eighteen foot trailer, is secured by a lien equal to its fair market value.
 8 Therefore, as of the Petition Date, the Debtor has had a no-asset bankruptcy case. The proposed
 9 Settlement Agreement is in the best interests of the creditors and the Debtor because it will result
 10 in the recovery of four hundred twenty-five thousand dollars that can be used for the benefit of
 11 creditors. Accordingly, approval of the Settlement Agreement will result in the recovery of
 12 funds that can be distributed to unsecured creditors.

13 **IV. CONCLUSION**

14 For the foregoing reasons, the Plaintiffs request that the Court approve the proposed
 15 Settlement Agreement.

16 Dated this 8th day of March, 2013.

17 **COTTON, DRIGGS, WALCH,**
 18 **HOLLEY, WOLOSON & THOMPSON**

19 /s/ Victoria L. Nelson

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